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UNITED STATES PATENT AND TRADEMARK OFFICE
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AUG 12 2002

In re

:
: DECISION ON
: PETITION FOR REGRADE
: UNDER 37 CFR 10.7(c)
:

MEMORANDUM AND ORDER

(petitioner) petitions for regrading his answers to questions 29 and 45 of the morning session and questions 12, 28, 32, 44, and 48 of the afternoon session of the Registration Examination held on October 17, 2001. The petition is denied to the extent petitioner seeks a passing grade on the Registration Examination.

BACKGROUND

An applicant for registration to practice before the United States Patent and Trademark Office (USPTO) in patent cases must achieve a passing grade of 70 in both the morning and afternoon sessions of the Registration Examination. Petitioner scored 67.

On February 4, 2002, petitioner requested regrading, arguing that the model answers were incorrect.

As indicated in the instructions for requesting regrading of the Examination, in order to expedite a petitioner's appeal rights, a single final agency decision will be made regarding each request for regrade. The decision will be reviewable under 35 U.S.C. § 32. The Director of the USPTO, pursuant to 35 U.S.C. § 2(b)(2)(D) and 37 CFR 10.2 and 10.7, has delegated the authority to decide requests for regrade to the Director of Patent Legal Administration.

OPINION

Under 37 CFR 10.7(c), petitioner must establish any errors that occurred in the grading of the Examination. The directions state: "No points will be awarded for incorrect answers or unanswered questions." The burden is on petitioners to show that their chosen answers are the most correct answers.

The directions to the morning and afternoon sessions state in part:

Do not assume any additional facts not presented in the questions. When answering each question, unless otherwise stated, assume that you are a registered patent practitioner. The most correct answer is the policy, practice, and procedure which must, shall, or should be followed in accordance with the U.S. patent statutes, the USPTO rules of practice and procedure, the Manual of Patent Examining Procedure (MPEP), and the Patent Cooperation Treaty (PCT) articles and rules, unless modified by a court decision, a notice in the *Official Gazette*, or a notice in the *Federal Register*. There is only one most correct answer for each question. Where choices (A) through (D) are correct and choice (E) is "All of the above," the last choice (E) will be the most correct answer and the only answer which will be accepted. Where two or more choices are correct, the most correct answer is the answer that refers to each and every one of the correct choices. Where a question includes a statement with one or more blanks or ends with a colon, select the answer from the choices given to complete the statement which would make the statement *true*. Unless otherwise explicitly stated, all references to patents or applications are to be understood as being U.S. patents or regular (non-provisional) utility applications for utility inventions only, as opposed to plant or design applications for plant and design inventions. Where the terms "USPTO" or "Office" are used in this examination, they mean the United States Patent and Trademark Office.

Petitioner has presented various arguments attacking the validity of the model answers. All of petitioner's arguments have been fully considered. Each question in the Examination is worth one point.

Petitioner has been awarded an additional point for afternoon question 12. Accordingly, petitioner has been granted one additional point on the Examination. No credit has been awarded for morning question 29 or 45, or for afternoon question 28, 32, 44 or 48. Petitioner's arguments for these questions are addressed individually below.

Morning question 29 reads as follows:

The following facts apply to Questions 29 through 32.

Kat Forrest has been a famous golf prodigy since childhood and currently enjoys phenomenal success on the professional golf tour, having won four straight major titles. Kat conceived, constructed and successfully tested a golfer's aid to help less-skilled players. Briefly, the aid includes a distance-finder that determines the precise distance from the golfer's ball to a target such as a fairway landing area or the hole. The aid obtains data concerning playing conditions (*e.g.*, wind speed and direction, soil moisture, *etc.*) from a series of sensors distributed throughout a golf course. A global positioning system provides accurate positional coordinates for the ball location and the target location. A user interface allows manual input of situational data (*e.g.*, ball in divot) and permits the user to override system settings and sensor data. The golfer's aid also includes computer memory that stores performance data calibrated to a specific golfer. In use, a digital processor determines a suggested play based on playing conditions and golfer skill level, and automatically displays information concerning the suggested play (*e.g.*, recommended golf club and preferred line of flight for the ball). Other information can be displayed in reply to user requests.

Kat comes to you in September 2001 and asks you to prepare and file a patent application on her behalf. She informs you that she has shown the golfer's aid only to her caddie and only under terms of strict confidentiality, and that she finalized the design on June 5, 2001. Her golfer's aid has not been sold or offered for sale. She also informs you that she derived the general idea for the golfer's aid, in part, from (1) an article appearing in the July 2000 edition of a golf magazine concerning a commercial distance finder and (2) a customized personal digital assistant (PDA) she saw on a store shelf while traveling in Thailand in April 2001. The distance finder has been available for sale in the United States since August 2000. The customized PDA was first offered for sale in the United States on June 8, 2001, but has not been disclosed in any publication or patent document.

You prepare a patent application with claims that you believe are likely to be found patentably distinct over the commercially available distance finder and the golf magazine article, either alone or in combination. The application is filed with the USPTO on September 17, 2001.

29. Which of the following statements is most true?

- (A) Kat should disclose the golf magazine article to the USPTO for consideration by the examiner, but need not disclose information concerning the customized PDA.
- (B) Kat need not disclose either the golf magazine article or information concerning the customized PDA to the USPTO for consideration by the examiner.
- (C) Kat should disclose both the golf magazine article and information concerning the customized PDA to the USPTO for consideration by the examiner.
- (D) Kat's observation of the customized PDA is not material to patentability because the observation took place in Thailand and the PDA was not offered for sale in the United States until June 2001, the PDA has not been described in a publication, and the PDA has not been patented.
- (E) Kat's observation of the customized PDA cannot be material to patentability because golfer's aids are nonanalogous art.

The model answer is selection (C).

29. ANSWER: The most correct answer is (C). Regardless of whether the customized PDA or the golf magazine article qualifies as prior art under 35 U.S.C. § 102(a) and/or § 102(b), and despite the belief that the claims are patentably distinct, Kat's derivation of the idea for the golfer's aid from those sources raises a possible obviousness rejection under 35 U.S.C. § 103/102(f). See 37 CFR 1.56. Moreover, the golf magazine article published more than a year before Kat's filing date and is therefore available as prior art under at least 35 U.S.C. § 102(b).

Petitioner has argued that (C) is not the best answer, because there is no duty to submit information which is not material to the patentability of any existing claim, and because in order for information to be material to patentability, it must establish by itself or in combination with other information, a *prima facie* case of unpatentability.

Petitioner argues that (A) is a better answer because no facts were stated in the question by which a person could reasonably conclude that the customized PDA would, either

alone or in combination with other information, present a *prima facie* case of unpatentability.

Petitioner's arguments have been fully considered but are not persuasive. 37 CFR 1.56 imposes a duty for each inventor named in the application to disclose "all information known to that individual to be material to patentability as defined in this section." The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability. Accordingly, the information that must be disclosed under 37 CFR 1.56 depends not only on the subject matter disclosed in the golf magazine article but also on Kat's observation of the customized PDA, and on all other information available to the examiner as prior art against the claims. Additionally, what must be disclosed to the examiner depends and on the wording of each pending claim in Kat's application. New prior art can be discovered at any time, and claims may be added, deleted, or amended. Accordingly, the most correct answer is (C). Kat should disclose both the golf magazine article and information concerning the customized PDA to the USPTO for consideration by the examiner since Kat's derivation of the idea for the golfer's aid from those sources raises a possible obviousness rejection under 35 U.S.C. § 103/102(f), since Kat does not

know what other references the examiner will find, and since Kat does not know what claim amendments will be introduced during prosecution. Answer (A) is not the best answer because without the benefit of knowing of Kat's observation of the customized PDA, the examiner might allow some claims to issue that are unpatentable under 35 U.S.C. § 103/102(f). Additionally, answer (A) is not the best answer because answer (B) is at least as good an answer. Answer (B) states that Kat need not disclose either the golf magazine article or information concerning the customized PDA to the USPTO for consideration by the examiner. If no *prima facie* case of unpatentability can be established against the claims, there is no duty under 37 CFR 1.56 for Kat to submit either the golf magazine article or the information concerning the customized PDA to the examiner.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Morning question 45 reads as follows:

45. Which of the following statements accords with proper USPTO practice and procedure?

- (A) A request for publication of a provisional application on a certain date will be treated as a request for publication as soon as possible.
- (B) If an applicant filed an application in a foreign country and the description of the invention in the foreign application is less extensive than the description of the invention in the application filed in the USPTO, the applicant may submit a redacted copy, eliminating the description not contained in the foreign application, for publication within 12 months after the filing date for which a benefit is sought under 35 U.S.C.
- (C) Early publication of a reissue application may be honored only if accompanied by a copy of the application in compliance with the Office electronic filing system requirements.

- (D) If an applicant filed an application in a foreign country and the description of the invention in the foreign application is more extensive than the description of the invention in the application filed in the USPTO, the applicant may submit a redacted copy, eliminating the description not contained in the foreign application, for publication within 14 months after the filing date for which a benefit is sought under 35 U.S.C.
- (E) Re-publication of a patent application is available where the Office makes a material mistake apparent from the records and the request for re-publication is filed within 3 months from the date of the patent application publication.

The model answer is selection (B).

45. ANSWER: (B) is correct because 37 CFR 1.217(a) permits such action within 16 months after the filing date for which a benefit is sought under 35 U.S.C. § 119(a), and 12 months is within 16 months. (A) and (C) are wrong because provisional and reissue applications are excepted from the publication provisions of 37 CFR 1.211(a) by 37 CFR 1.211(b). (D) is wrong because the provisions for publication of a redacted application do not apply when the foreign application is more extensive than the US application. (E) is wrong because 37 CFR 1.221(b) limits the period for filing a request for re-publication under such circumstances to 2 months from the date of the patent application publication.

Petitioner chose answer (A), and answer (A) states that: "A request for publication of a provisional application on a certain date will be treated as a request for publication as soon as possible." Petitioner's arguments have been fully considered but are not persuasive. 37 CFR 1.219 provides that "No consideration will be given to requests for publication on a certain date, and such requests will be treated as a request for publication as soon as possible." However, as set forth in its first sentence, 37 CFR 1.219 applies to "Applications that will be published under § 1.211." Since 37 CFR 1.211(b) indicates that provisional applications "shall not be published," 37 CFR 1.219 does not apply to provisional applications. As provided in the model answer, (B) is the most correct answer because 37 CFR 1.217(a) permits the redacted copy of the

application to be filed within 16 months after the filing date for which a benefit is sought under 35 U.S.C. § 119(a), and because 12 months is within 16 months.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 28 reads as follows:

28. In which of the following instances is the reference properly available as prior art under 35 U.S.C. § 102(d)?

- (A) A U.S. patent application is filed within the one year anniversary date of the filing date of the foreign application. The reference is the foreign application.
- (B) The applicant files a foreign application, later timely files a U.S. application claiming priority based on the foreign application, and then files a continuation - in - part (CIP) application, and the claims in the CIP are not entitled to the filing date of the U.S. parent application. The foreign application issues as a patent before the filing date of the CIP application and is used to reject the claims directed to the added subject matter under 35 U.S.C. §§ 102(d)/103. The reference is the foreign application.
- (C) The applicant files a foreign application, and later timely files a U.S. application claiming priority based on the foreign application. The examined foreign application has been allowed by the examiner and has not been published before the U.S. application was filed. The reference is the foreign application.
- (D) The reference is a defensive publication.
- (E) All of the above.

The model answer is selection (B).

28. ANSWER: The most correct answer is (B). 35 U.S.C. § 102(d); MPEP § 2135.01, (A Continuation - In - Part Breaks The Chain Of Priority As To Foreign As Well As U.S. Parents). If an applicant files a foreign application, later files a U.S. application claiming priority based on the foreign application, and then files a continuation - in - part (CIP) application whose claims are not entitled to the filing date of the U.S. parent, the effective filing date of the CIP application is the filing date of the CIP. The applicant cannot obtain the benefit of either the U.S. parent or foreign application filing dates. In re van Langenhoven, 173 USPQ 426, 429 (CCPA 1972); Ex parte Appeal No. 242 - 47, 196 USPQ 828 (Bd. App. 1976). (A) is incorrect. 35 U.S.C. § 102(d). (C) is not correct. 35

U.S.C. § 102(d); MPEP § 2135.01, (An Allowed Application Can Be A 'Patent' For Purposes Of 35 U.S.C. 102(d) As Of The Date Published For Opposition Even Though It Has Not Yet Been Granted As A Patent), citing Ex parte Beik, 161 USPQ 795 (Bd. App. 1968). An application must issue into a patent before it can be applied in a 35 U.S.C. 102(d) rejection. Ex parte Fujishiro, 199 USPQ 36 (Bd. App. 1977). (D) is not correct. 35 U.S.C. § 102(d); MPEP § 2136 (Defensive Publications Are Not Prior Art As Of Their Filing Date) citing Ex parte Osmond, 191 USPQ 334 (Bd. App. 1973). (E) is not correct inasmuch as (A), (C) and (D) are not correct.

Petitioner has argued that answer (D) is correct because "By the express terminology of § 102(d), defensive publications are used as prior art - namely inventor's certificates." Petitioner's arguments have been fully considered but are not persuasive. While it is true that 35 U.S.C. 102(d) expressly provides for the use of inventor's certificates as prior art, defensive publications are not inventor's certificates. Defensive publications are published in the United States under the Defensive Publication Program. See MPEP § 711.06. Inventor's certificates, on the other hand, are filed in foreign countries. They were available from the former Soviet Union, and they remain available from Cuba and the Democratic People's Republic of Korea.

Petitioner further argued that answer (D) is better than model answer (B) because answer (B) fails to specify whether the foreign application was filed more than 12 months prior to the filing date of the pending U.S. application. While it is true that answer (B) fails to specify whether the foreign application was filed more than 12 months prior to the filing date of the pending U.S. application, it is a better answer than (D) because (D) does not specify that the defensive publication was the subject of an inventor's certificate by the applicant or his legal representatives, (D) does not specify that there was an inventor's certificate in a foreign country prior to the date of the application for patent in

this country, and it also does not specify that there was an inventor's certificate more than 12 months prior to the filing date of the pending U.S. application.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 32 reads as follows:

32. Which of the following is true?

- (A) Once the issue fee has become due, provided an original application has not been pending more than three years, the applicant may request and the Office may grant a request for deferral of payment of the issue fee.
- (B) The time period set for the payment of the issue fee is statutory and cannot be extended. However, if payment is not timely made and the delay in making the payment is shown to be unavoidable, upon payment of a fee for delayed payment, it may be accepted as though no abandonment had occurred, but there will be a reduction on the patent term adjustment for the period of abandonment.
- (C) Upon written request, a person citing patents and printed publications to the Office that the person believes has a bearing on the patentability of a particular patent, may request that his or her name remain confidential.
- (D) To obtain benefit of priority based on an earlier filed patent application, an applicant in a later filed continuation application is not required to claim priority under 35 U.S.C. § 120 to an earlier filed application.
- (E) Each of statements (B) and (C) is true.

The model answer is selection (E).

32. ANSWER: (E). As to (B), see 35 U.S.C. §§ 151; 154(b)(2)(ii) and (iii); 37 CFR 1.704(c)(3); MPEP § 1306. As to (C) see MPEP §§ 2203 and 2212. As to (D), the claim for priority is not required, as a person may not wish to do so in order to increase the term of his or her patent. As to (A) deferral under 37 CFR 1.103 is not available following the notice of allowance. Since (B) and (C) are correct, (E) is the best answer.

Petitioner's arguments have been fully considered but are not persuasive. Petitioner has argued that (D) is true because priority may be claimed under 35 U.S.C. § 119 rather than § 120. Petitioner is correct that a priority claim under 35 U.S.C. § 120 is not the only way to obtain benefit of priority based on an earlier filed patent application. For example, benefit may be obtained under 35 U.S.C. § 119(a)-(d) if the earlier application is a foreign application, benefit may be obtained under 35 U.S.C. 365(a) if the earlier application is an international application designating at least one country other than the United States, and benefit may be obtained under 35 U.S.C. § 119(e) if the

earlier application is a provisional application. However, the DIRECTIONS provide: "Unless otherwise explicitly stated, all references to patents or applications are to be understood as being U.S. patents or regular (non-provisional) utility applications for utility inventions only, as opposed to plant or design applications for plant and design inventions." Accordingly, the reference to "an earlier filed patent application" and the reference to "an earlier filed application" in answer (D) refer to a regular (non-provisional) utility application, and not to an earlier filed provisional, earlier filed international, or earlier filed foreign application. Answer (E) is the best answer because both (B) and (C) are correct, and as provided in the DIRECTIONS, "Where two or more choices are correct, the most correct answer is the answer that refers to each and every one of the correct choices."

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 44 reads as follows:

44. A condition for patentability is that an inventor is entitled to a patent unless he has abandoned the invention. Your client has engaged in conduct or omissions that may or may not be construed as abandonment of her invention. In which of the following situations would it be proper for a patent examiner to conclude, in an *ex parte* proceeding, that an inventor has abandoned the invention?

- (A) From the inventor's inaction, following conception, to do anything over a period of time to develop or patent his or her invention, the inventor's ridicule of another person's attempts to develop that invention, and the inventor's active show of interest in promoting and developing the invention only after successful marketing by another of a device embodying that invention.
- (B) When acts of another can be imputed to the inventor as an intent to abandon the invention.
- (C) From the inventor's delay alone in filing a first patent application for the invention.
- (D) From an inventor's delay in reapplying for patent after abandonment of a previous patent application.
- (E) From the inventor's act of disclosing but not claiming the subject matter in a previously issued patent, even though the inventor claims the subject matter in another patent application that is filed within one year after the patent issued.

The model answer is selection (A).

44. ANSWER: The most correct answer is (A). 35 U.S.C. § 102(c); MPEP § 2134, and see *Davis Harvester Co., Inc. v. Long Mfg. Co.*, 149 USPQ 420, 435 - 436 (E.D. N.C. 1966). (B) is not correct. 35 U.S.C. § 102(c); MPEP § 2134, and see *Ex parte Dunne*, 20

USPQ2d 1479 (Bd. Pat. App. & Inter. 1991). (C) is not correct. 35 U.S.C. § 102(c); MPEP § 2134, and see *Moore v. U.S.*, 194 USPQ 423, 428 (Ct. Cl. 1977). (D) is not correct. 35 U.S.C. § 102(c); MPEP § 2134, and see *Petersen v. Fee Int'l, Ltd.*, 381 F. Supp. 1071, 182 USPQ 264 (W.D. Okla. 1974). (E) is not correct. 35 U.S.C. § 102(c); MPEP § 2134, and see *In re Gibbs*, 437 F.2d 486, 168 USPQ 578 (CCPA 1971).

Petitioner's arguments have been fully considered, but are not persuasive.

Petitioner has argued that in order for there to be abandonment of an invention under 35 U.S.C. § 102(c), there must be an invention, and in order for there to be an invention, there must be both conception and reduction to practice. In the facts set forth, it appears that there was no reduction to practice until the "inventor" filed his or her application. The facts closely track the facts in *Davis Harvester Co., Inc. v. Long Mfg. Co.*, 149 USPQ 420, 435 - 436 (E.D. N.C. 1966), where the court found that invention requires two steps, one mental and another physical. In that case, the court found that the inventor (Davis) did fail in the "physical" element of applying the idea (conception) to a practical result (reduction to practice). However, the court also went on to assume, *arguendo*, that Davis did conceive and reduce to practice the invention. The court then found that there was a hiatus of six years before Davis asserted interests in the invention, and that during this hiatus, Davis ridiculed and belittled the invention while attempting to promote and patent an alternative that he believed to be superior to the invention that he had abandoned. On the facts, the court found that if Davis ever conceived and reduced to a rudimentary form the invention, it was discarded and abandoned. Accordingly, if it is unclear to an examiner from the facts presented whether an inventor derived the invention from someone else before reducing it to practice himself, or whether the inventor reduced the invention to practice first and then abandoned the invention by

dedicating it to his competitors to market and promote, it would be appropriate in view of *Davis* to apply a rejection under 35 U.S.C. § 102(c). Accordingly, (A) is the best answer. Petitioner argues that answer (E) is much better than answer (A) because the inventor's act of disclosing but not claiming the subject matter in a previously issued patent is "certainly evidence of abandonment." According to the MPEP, any inference of abandonment is rebuttable by an application filed at any time before a statutory bar arises, and a rejection under 35 U.S.C. 102(c) predicated solely on the issuance of a patent which discloses the subject matter of the claim in the application without claiming it would be improper. Since the facts set forth in answer (E) do not provide any further evidence regarding the inventor's intent to dedicate the disclosed invention to the public, it would be improper for the examiner to conclude that the inventor has abandoned the invention.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 48 reads as follows:

48. Your longstanding client, Acme Chemical, comes to you for advice concerning a competitor's patent that Acme fears might cover Acme's key commercial product. Acme informs you that it began selling its product approximately eleven months before the competitor filed its patent application, and that a complete description of the product and how to make it was published in a trade magazine approximately ten months before the competitor's December 8, 1999 application filing date. Acme asks you to recommend options short of litigation that might be available to challenge validity of the patent. Acme also asks that in making your recommendation you take into account that Acme will not challenge the patent's validity unless it can be actively involved in all phases of the proceeding, even if that involvement will increase Acme's costs. Which of the following is the most reasonable advice to Acme?

- (A) You suggest that Acme request *ex parte* reexamination on the basis of the trade magazine publication and that Acme file a reply to any statement by the patent owner concerning any new question of patentability.
- (B) You suggest that Acme request *ex parte* reexamination on the basis of Acme's prior sales and the trade magazine publication.
- (C) You suggest that Acme request *inter partes* reexamination on the basis of the trade magazine publication only.
- (D) You suggest that Acme request *inter partes* reexamination on the basis of Acme's prior sales and the trade magazine publication.
- (E) You suggest that Acme inform the competitor in writing of the prior sales and trade magazine publication to force the competitor to inform the USPTO of this information and to force the competitor to initiate a reexamination of its own patent.

The model answer is selection (C).

48. ANSWER: (C). Answers (B) and (D) are unreasonable advice at least because reexamination is available only on the basis of prior art patents or publications. *See, e.g.,* 37CFR 1.510, 1.552, 1.906 and 1.915. A request for reexamination may not properly rely upon evidence of public use or sales. Answer (A) is less reasonable than (C) at least because Acme will have the opportunity to submit a reply only if the patent owner chooses to file a statement under 37 CFR 1.530. 37 CFR 1.535. Any further proceedings would be completely *ex parte*. Acme has made it clear that it wants to participate in the proceedings. Answer (E) is less reasonable than (C) because a patent owner is not obliged to cite prior art to the USPTO in an issued patent. Also, the competitor would not be required to request reexamination. Indeed, the competitor would not be able to request reexamination unless the competitor had a good faith belief that the trade magazine article raised a substantial new question of patentability.

Petitioner selected answer (D) as the correct answer. Petitioner argues that it would be foolish not to include the prior sale in the request for reexamination, because "the regulations *also require the examiner to make a notation in the file as to the prior sales.*" Petitioner's arguments have been fully considered but are not persuasive.

Answer (D) is not correct because reexamination is available only on the basis of prior art patents or publications and a request for reexamination may not properly rely upon evidence of public use or sales as stated in the model answer above. Furthermore, Petitioner has not referenced the regulation that makes such a requirement, but 37 CFR

1.906(b) does state: “the existence of such issues will be noted by the examiner in the next Office action, in which case the patent owner may desire to consider the advisability of filing a reissue application to have such issues considered and resolved.” Accordingly, it could be beneficial for a practitioner to raise the issue of Acme’s prior sales during a reexamination proceeding, because it might result in a reissue application being filed so the issue may be resolved. Accordingly, answer (C) is the best answer because in answer (C), the practitioner suggests requesting *inter partes* reexamination on the basis of the trade magazine publication only. An order for *inter partes* reexamination will not be granted unless there is a substantial new question of patentability on the basis of prior patents and printed publications. What was sold by Acme will not be taken into account when determining whether or not it would be prudent to request *inter partes* reexamination.

No error in grading has been shown. Petitioner’s request for credit on this question is denied.

ORDER

For the reasons given above, one point has been added to petitioner's score on the Examination. Therefore, petitioner's score is 68. This score is insufficient to pass the Examination.

Upon consideration of the request for regrade to the Director of the USPTO, it is ORDERED that the request for a passing grade on the Examination is denied.

This is a final agency action.

A handwritten signature in black ink, appearing to read 'Robert J. Spar', is positioned above a horizontal line.

Robert J. Spar
Director, Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy